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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

LUTHER GENE WEATHERS,

Defendant and Appellant.

A156042

(Lake County Super. Ct. Nos.
CR944443, CR948839, CR950444)

Defendant Luther Gene Weathers appeals from a judgment entered after he pled no contest following a plea agreement in three cases. His counsel filed an opening brief asking that this court conduct an independent review of the record for arguable issues—i.e., those that are not frivolous, as required by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel also informed defendant that he had the right to file a supplemental brief on his own behalf, but defendant declined to file such a brief. We conclude there are no meritorious issues and affirm the judgment.

BACKGROUND

On October 8, 2016, defendant was arrested for driving with a suspended license and under the influence of a drug. Police found heroin and methamphetamine on defendant and discovered a variety of drug paraphernalia after executing a search warrant at defendant's home. On September 7, 2017, defendant was arrested for fleeing from the police and driving with a suspended license. Police found heroin and methamphetamine on defendant and drug paraphernalia. On April 24, 2018, a search of defendant's home

and person uncovered large amounts of heroin and methamphetamine, as well as drug paraphernalia.

Based on the incidents above, the People filed informations charging defendant with, among other things, one count of transporting and selling heroin in case No. CR944443 (Health & Saf. Code,¹ § 11352, subd. (a)); one count of evading an officer in case No. CR948839 (Veh. Code, § 2800.2, subd. (a)); and one count of possessing methamphetamine for sale in case No. CR950444 (§ 11378). Defendant pled not guilty in each case.

In August 2018, after a negotiated plea agreement, defendant changed his pleas to “no contest” with respect to the charges set forth above. He also admitted a special allegation that he committed a felony while released on bail or on his own recognizance (Pen. Code, § 12022.1) in case No. CR950444. The parties executed a plea agreement pursuant to which the longest prison sentence the court could impose on defendant was six years, four months.

At defendant’s sentencing hearing, the court denied him probation, sentenced him to a prison term of six years, four months, and imposed fines and fees. Defendant filed a notice of appeal and an amended notice of appeal.

On February 19, 2019, the court resentenced defendant. The court denied probation and sentenced defendant to a prison term of six years, four months as follows: in case No. CR944443, the lower term of three years for violating section 11352, subdivision (a); in case No. CR948839, a term of eight consecutive months for violating Vehicle Code section 2800.2, subdivision (a); and in case No. CR950444, a term of eight consecutive months for violating section 11378, and two years for the Penal Code section 12022.1 enhancement. The court stated its reasons for denying probation and imposing consecutive sentences, and it did not impose fines and fees because defendant could not pay. Defendant filed a notice of appeal challenging his resentencing, as well as a

¹ All further statutory references are to the Health and Safety Code unless stated otherwise.

subsequent notice of appeal challenging the resentencing and requesting a certificate of probable cause to challenge the validity of his plea. The trial court issued the certificate of probable cause.

DISCUSSION

Defendant's counsel filed a *Wende* brief and, pursuant to *Anders v. California* (1967) 386 U.S. 738, 744–745,² listed defendant's lack of understanding of the permissible sentencing and eligibility for probation as issues that might arguably support the appeal. Our review of the record establishes that there are no meritorious issues to be argued. Defendant's plea form listed the minimum and maximum sentencing terms for the crimes and the special allegation at issue. Defendant acknowledged that his plea was a "lid" agreement whereby he would be sentenced to no more than six years, four months (including the low term of three years for violation of section 11352, subdivision (a) in case No. CR944443), and he would be eligible for probation consideration "per applicable law." Defendant had ten prior felony convictions, was thus subject to Penal Code section 1203, subdivision (e)(4)'s probation restriction, and he confirmed in his plea form that he had the opportunity to speak with his counsel about his prior convictions and the consequences of his plea.

Defendant also confirmed that he understood that he was waiving the Constitutional rights set forth in his plea form, and that he had no further questions of the court or of his attorney with regard to his plea and admissions in this case, his rights, or anything else on his plea form. Before accepting defendant's pleas, the court had defendant confirm on the record that he had read and understood his plea form, had signed and initialed the form, and that he understood that he was giving up, and was in

² In *Anders, supra*, 386 U.S. at p. 744, the United States Supreme Court stated that, when requesting that a reviewing court determine whether an indigent's appeal is frivolous, counsel may file a "brief referring to anything in the record that might arguably support the appeal." A listing of issues under *Anders* is not constitutionally required (*Smith v. Robbins* (2000) 528 U.S. 259, 272–273); it is not a part of California's *Wende* procedure (*People v. Garcia* (2018) 24 Cal.App.5th 314, 323–324); and it is not necessarily helpful in a *Wende* appeal (*id.* at pp. 324–325).

fact giving up, the rights described in the plea form. Defendant also confirmed on the record that he had no questions regarding his plea form and that he was entering the plea freely and voluntarily. We find no arguable issues with respect to the validity of defendant's plea.

We also see no arguable error in sentencing. The court stated its reasons for imposing consecutive sentencing terms, and the sentences imposed were within the range agreed to by the parties and allowed by law. (§§ 11352, subd. (a), 11378; Pen. Code, §§ 1170, subd. (h), 12022.1, subd. (b); Veh. Code, § 2800.2, subd. (a).) Finally, the court determined that defendant was unable to pay fines and fees so did not impose any. On this record, we find no arguable error that would result in a disposition more favorable to defendant within the meaning of *Wende*. (See also *People v. Kelly* (2006) 40 Cal.4th 106.)

DISPOSITION

The judgment is affirmed.

BROWN, J.

WE CONCUR:

POLLAK, P. J.

TUCHER, J.